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| <b>Item No.</b><br>9.              | <b>Classification:</b><br>Open | <b>Date:</b><br>21 June 2011   | <b>Meeting Name:</b><br>Cabinet |
| <b>Report title:</b>               |                                | Southwark Schools for the Future (SSF): Update to Cabinet and delegation of award of contracts |                                 |
| <b>Ward(s) or groups affected:</b> |                                | All  |                                 |
| <b>Cabinet Member:</b>             |                                | Councillor Catherine McDonald, Children's Services   |                                 |

## **FOREWORD – COUNCILLOR CATHERINE MCDONALD, CABINET MEMBER FOR CHILDREN'S SERVICES**

This report seeks to update Cabinet on the status of the Building Schools for the Future programme following the financial close of the Phase 2 programme and the value for money review conducted by Partnerships for Schools on behalf of the Department for Education.

Despite being advised in July 2010 that our programme would be unaffected by cuts to BSF nationally in October 2010 we were advised that all our projects would be reviewed in order that any possible savings could be identified. We have now had confirmation of budgets for all our projects except the planned New School in Rotherhithe and our KS4 Inclusive Learning provision.

In November 2010 we were advised that the Department for Education no longer supported a new school in Rotherhithe but that a lesser allocation of funds would be available to deliver up to two forms of entry locally. The amount has still to be determined by the Department, that is, no confirmation of funds for this project was given through the BSF legacy process and since that time we have resubmitted Pupil Place Planning data in support of the need for new places in Rotherhithe at Partnerships for Schools' request. We await feedback from Partnerships for Schools in regard to the accepted need for places and the funding available to deliver them.

This report also seeks delegation from the Leader to the Cabinet Member for Children's Services to enter into contracts for the delivery of the next Phase of the Building Schools for the Future programme subject to confirmation of funding from Partnerships for Schools and affordability.

I ask that the Cabinet and Leader, after consideration of the officer's report, note and approve the recommendations below.

## **RECOMMENDATIONS**

### **Recommendations for the Cabinet**

1. Cabinet note that Phase 2 of Southwark's SSF programme has reached financial close within the affordability parameters previously approved by Cabinet (15 June 2010).
2. Cabinet note the outcome of the BSF Legacy Review and the current status of the BSF projects that were subject to that review.

3. Cabinet note the status of the New School Rotherhithe project and that a further report will be brought to Cabinet in relation to proposals for the delivery of new places in Rotherhithe and the financial implications thereof.
4. That Cabinet note that the SSF Project Director will continue to work with Children's Services, Finance and Resources, the schools, governing bodies & diocesan authorities to identify other budgets in order to minimise the necessary financial contribution from the council, in accordance with the Executive decision May 2 2007.

### **Recommendations for the Leader of the Council**

5. That the Leader delegates authority to the Cabinet Member for Children's Services in consultation with the Strategic Director of Children's Services to approve contract award for the contracts set out in Table 2, subject to:
  - confirmation of funding from Partnerships for Schools;
  - the council's financial contribution being within the parameters set out in Table 4.
6. That the Leader delegates authority to the Cabinet Member for Children's Services in consultation with the Strategic Director of Children's Services to enter into the development agreements with the school counterparties set out in Table 3.

### **BACKGROUND INFORMATION**

7. On 2 May 2007, Southwark Executive approved the Southwark Schools for the Future Outline Business Case (OBC). This OBC outlined a programme of investment in Southwark's secondary school estate enabled by funding from Partnerships for Schools (PfS) of £179m.
8. On 28 November 2006, Southwark Executive made available £20m in Southwark's capital programme for 2007 to 2016 for Southwark Schools for the Future.
9. In May 2009 Southwark entered into a Strategic Partnering Agreement with 4 Futures to deliver the Building Schools for the Future (BSF) programme.
10. The BSF programme was to be procured in three phases. The £179m funding allocation is based at 1 Quarter 2008 and excludes VAT. It is subject to inflation and deflation over the life of the programme and to formal approval by PfS ahead of project development and financial close of individual schemes.

### **Phase 1**

11. Phase 1 projects are Tuke Special School and St Michael's Catholic College. Tuke School was a design and build project and opened in September 2010. St Michael's Catholic College is a PFI project and opened in January 2011. Works at the site are ongoing as the second Phase of demolition and landscaping is due to complete in August 2011.
12. Both schools are now receiving facilities management and ICT services through 4 Futures.

## **Phase 2**

13. Phase 2 projects (St Thomas the Apostle College, Sacred Heart and New School Aylesbury and Spa) reached financial close on August 17 2010 and have started on site.
14. The Spa and New School Aylesbury design & build contracts were fully funded by the BSF capital grant allocation and the PFI schemes at St Thomas the Apostle College and Sacred Heart were fully funded through agreed grant and school contributions.
15. An allocation has been made within the SSF Contingency against ongoing risks through the construction period.

## **St Michaels and All Angels**

16. St Michael and All Angels (SMAAA) and the co-located Highshore project did not reach financial close in August 2010 as anticipated. This was as a result of concerns over the viability of the proposed expansion of SMAAA considering evidence of falling rolls. A reduction in the size of the proposed school and alternative sponsorship arrangements have now been agreed between the Academy and the Department for Education and this project is now progressing in parallel with the Phase 3 projects.
17. This project is now to be redeveloped in line with the new sponsor's requirements and the reduced pupil cohort. There are costs arising as a result of the design works relating to the original design that was developed to planning submission. These are to be met from within the budget allocated to the project. Some allowance against these costs has also been made from within the SSF contingency.
18. The implications of the closure of SMAAA alongside its reopening with a reduced cohort have been factored into Pupil Place Planning.

## **BSF Legacy Review**

19. The scope and funding for Southwark's Phase 3 programme was agreed by Executive in March 2010. The Stage 0 submission for Phase 3 schools was submitted to Partnerships for Schools in March 2010 for approval of the detailed programme and confirmation of Southwark's funding. New project request letters were issued in September 2010 to allow project development to progress for Notre Dame, St Saviour's and St Olave's, Bredinghurst and KS3 SILS at Highshore with a view to the first of the Phase 3 projects starting on site in summer 2011.
20. In October 2010 Southwark was advised that our BSF programme would be subject to review to ensure that our proposals still represented value for money.
21. Southwark was formally advised of a methodology whereby the Southwark would be required to conduct a high level review of each project and identify options that would reduce project costs. The methodology required that PfS would conduct their own analysis of these options and then a period of consultation would take place with Southwark to enable the assessment of the

deliverability of these options. Following this part of the process PfS would confirm their revised funding for individual projects.

22. Southwark was proactively engaged in this process and, following a comprehensive review, submitted a detailed document to Partnerships for Schools in line with the deadline given of 26 November 2010.
23. Ahead of this submission the Department for Education advised that following consideration of boroughwide Pupil Place Planning data that the Authority was required to submit to Partnerships for Schools in the May 2010, Southwark's proposals for a New School in Rotherhithe would no longer be funded by the government through Building Schools for the Future. The Department for Education wrote to the council stating that: "It is not considered that a case can be made for the delivery of a new 5 form of entry secondary school in Rotherhithe at this time. As such the £19.6 million funding provisionally allocated to this project through the Stage 0 approval process in April 2010 will no longer be available to the Authority to deliver that proposal".
24. Representations had been made to the Department and PfS in regard to the local demand for secondary places. This case was only partially accepted by the Department who advised that a revised funding allocation would be made to enable the delivery of two additional forms of entry of secondary places serving Rotherhithe.
25. In March 2011 Partnerships for Schools confirmed the government savings that would be sought from our BSF funding allocation (savings for St Michael's and All Angel's were confirmed in December 2010). The savings advised to date are detailed in Table 1.

**Table 1: Target savings advised by Partnerships for Schools**

| School Name                              | Saving £        | Revised Budget  | % Reduction |
|--|-----------------|-----------------|-------------|
| St Michael's & All Angels/Highshore      | 6,507,717       | £31.7m          | 17%         |
| KS3 Southwark Inclusive Learning Service | 36,540          | £4.2m           | <1%         |
| Notre Dame                               | 52,429          | £7.9m           | <1%         |
| Bredinghurst                             | 86,520          | £10.2m          | <1%         |
| St Saviours and St Olaves                | 81,267          | £8.9m           | <1%         |
| KS4 Southwark Inclusive Learning Service | To be confirmed | To be confirmed | N/A         |
| New School Rotherhithe                   | To be confirmed | To be confirmed | N/A         |

26. It is considered the required deliverables for these projects can be delivered from within the reduced grant funding. For Notre Dame, Bredinghurst, St Saviour's and St Olaves and KS3 SILS this funding will be supplemented through the allocation from within the SSF Capital Contingency approved by Executive in March 2010. A further contingency allocation was made by Executive against Notre Dame and St Saviours and St Olaves in consideration of VAT liabilities arising as a result of their voluntary-aided status and the refurbishment nature of the projects.
27. The larger reduction in funding associated with SMAAA/Highshore was as a result of the smaller school that is to be delivered (intake reduces from 6FE at OBC to a proposed 4FE now) and also a better value standardised modular approach to construction. Delivery within this revised budget is challenging, in particular as a result of the decant arrangements required for the existing schools.

28. Phase 3 Schools are anticipated to reach financial close in two Phases. Phase 3a (Notre Dame, St Saviour's and St Olave's and Breedinghurst) is anticipated to reach close in July 2011. Phase 3b (St Michael's and All Angel's Academy/Highshore and Southwark Inclusive Learning Services 3 (SILS 3)) is anticipated to reach close in the Autumn as a result of the issues arising in relation to St Michael's and All Angel's Academy outlined above. Although design and contract development is further advanced in relation to SILS 3 this contract is to be entered into at the same time as SMAAA/Highshore as it is dependent on the vacation of the Highshore buildings.
29. Some works will be required during the summer holiday periods agreement for which will need to be entered into in advance of financial close at St Saviour's and St Olave's, Notre Dame and St Michael's and All Angel's in order that construction sites are established and decant arrangements are in place ahead of the start of the autumn term. Authority to enter into these Advance Works Agreements has previously been delegated to the Head of Property.
30. ICT funding was confirmed as unchanged with the full allocation still available. The scope of the ICT investment in the remaining schools is to be reduced as a result of the financial implications of the supported borrowing nature of a proportion of the ICT funding. The scope is to be reduced with a view to reducing the overall funding required in order that supported borrowing is not called upon. These scope reductions will be made in agreement with the affected schools.

#### **New School Rotherhithe**

31. In April 2011 Southwark was invited by PfS to submit revised and current Pupil Place Planning data. This submission was made on the 18 April 2011.
32. Pupil Place Planning indicates that, compensating for the affect of the closure of SMAAA and the impact that this has on place availability in the short term, new Year 7 places are required boroughwide from September 2016, with 5 FE required by 2019/20. Due to existing local factors and ongoing regeneration it is considered that these new places should be located in Rotherhithe. The identification of the location of a new school will remain part of the Area Action Plan.
33. On the 17 May 2011 Cabinet agreed a motion referred to it from Council Assembly of the 6 April 2011. This motion supported the Cabinet in calling for the government to confirm the funding available for a new school in SE16 and welcomed the Cabinet's wish to work with stakeholders to find a solution for the places needed in the area.
34. In May 2011, following a formal request for clarification in regard to available funding, Southwark was advised by the Department for Education that £19.6m provisionally remains within Southwark's BSF funding envelope, although not for the previous proposal for a new school. The DfE also advised that the actual funding that will be available will be subject to its consideration of Southwark's Pupil Place Planning. Officers have further been advised that ahead of any subsequent confirmation of available funding Partnerships for Schools will be required to confirm that any investment proposals respond appropriately to the accepted demand and demonstrate value for money.

35. The most appropriate approach to delivering additional places will depend on the number of places that the Department for Education accepts are required based on Southwark's updated pupil place planning data. A number of organisations have contacted the Authority expressing an interest in sponsoring a new school in Rotherhithe if it is progressed.
36. Any proposals in regard to progressing New School Rotherhithe will be developed alongside local stakeholders and will be reported to Cabinet ahead of any formal submission to PfS seeking approval of funding.

#### **Key Stage 4 Southwark Inclusive Learning Services**

37. In March 2010 the Executive approved a proposal to locate KS4 SILS in a refurbished element of Southwark College's Camberwell Site. The College now has alternative plans for the site and this proposal is no longer viable.
38. An alternative proposal for the re-provision of KS4 SILS will be brought to Cabinet following an options appraisal.

#### **Phase 3a Financial Close**

39. Approval is sought to delegate authority to the Cabinet Member for Children's Services to enter into the contracts and agreements outlined below. This delegation is required due to the short timescales from submission of costed proposals from 4 Futures, the review of Southwark's Final Business Case and confirmation of funding by Partnerships for Schools and the need to award the contract to minimise the value and period of any advance works necessary during the summer holiday period.
40. The contracts form a suite of inter-related agreements which are based on national standard form documentation. The contracts will be entered into concurrently, but have different initial terms and extensions. This documentation will be subject to detailed review by Southwark Legal Services, with advice from external legal advisors (Trowers and Hamblins).
41. In order to secure agreement by the school counterparties (governing bodies and diocese authority) to the financial contributions they will make towards the cost of the contracts, the Council will also enter into a series of development agreements (see table 3). These agreements:
  - Allow the construction to take place on each school site (which are not in Council ownership);
  - Allow ICT equipment and a Facilities Management service to be delivered at the school sites;
  - Give warranties to the Council for property and human resources information that has been provided by the school; and
  - Secure agreement by the governing bodies to the financial contributions they will make towards the costs in the contracts.

42. Table 2 summarises the contracts that are to be entered into at Financial Close of Phase 3a.

**Table 2: Contracts to be signed simultaneously at Phase 3a contract award**

| <b>Contract</b>  | <b>Contract purpose</b>   | <b>Parties</b>                                    | <b>Initial term</b>  | <b>Extension</b> |
|--|---|---|--|------------------|
| Design & Build Contract – Notre Dame                               | Detailed design work & build of Notre Dame  | London Borough of Southwark and 4 Futures Limited | No term – dependent on completion of build and defects period (approx 3 years) | N/A              |
| Design & Build Contract – St Saviour's and St Olave's              | Detailed design work & build of St Saviour's and St Olave's   | London Borough of Southwark and 4 Futures Limited | No term – dependent on completion of build and defects period (approx 3 years) | N/A              |
| Design & Build Contract – Breedinghurst                            | Detailed design work & build of Breedinghurst   | London Borough of Southwark and 4 Futures Limited | No term – dependent on completion of build and defects period                  |                  |
| Phase 3 ICT Contract   | ICT services including infrastructure work where applicable for Notre Dame, St Saviour's and St Olave's, Breedinghurst and Charter Schools. | London Borough of Southwark and 4 Futures Limited | 5 years  | 5 years          |
| Deeds of variation relating to the Facilities Management Agreement | To join the umbrella contract for Facilities Management Services for the schools.   | London Borough of Southwark and 4 Futures Limited | 10 years   | 5+5+5 years      |
| Associated documents and agreements                                | Other linked and associated documents and agreements relating to the headline contracts, e.g. collateral warranties                         | Various parties                                   | Various  | Various          |

43. Table 3 summarises the governing body agreements to be entered into with each school:

**Table 3: Governing Body/Development Agreements**

| <b>Governing body agreement and counterparties</b> |   |   |
|--|---|---|
| <b>Agreement</b>                                   | <b>School counterparties</b>  | <b>Agreement purpose</b>  |
| Governing Body Agreement – Development Agreement   | Governing Body of each school and Diocesan Authority and Archbishop of Southwark where applicable         | Agreement covering the construction period, given school is in possession of the site |
| Governing Body Agreement – FM services agreements  | Governing Body of each non-PFI school and Diocesan Authority and Archbishop of Southwark where applicable | Agreement governing the FM services for each school taking the FM service             |
| Governing Body Agreement – ICT services agreements | Governing Body of each non-PFI school and Diocesan Authority and Archbishop of Southwark where applicable | Agreement governing the ICT services for the phase 3a schools.                        |
| Associated documents and agreements                | Other linked and associated documents and agreements relating to the headline contracts                   | Various   |

### **Financial implications**

44. The funding associated with these contracts and agreements will come from:

- PfS – who will confirm their funding commitment following approval of an FBC, to be submitted to them and approved by both themselves and the Department for Education immediately prior to contract award;
- Southwark – a capital allocation relating to these Phase 3 schools as per the Executive decision of March 2010 alongside a further allocation from within the SSF Capital Contingency to offset VAT liabilities arising against projects at Voluntary Aided schools; and
- Schools – who will commit to revenue contributions in back-to-back governing body agreements to be signed prior to contract award.

45. For Design & Build community schools a commitment was made by Executive in May 2007 to meet an affordability gap for lifecycle and FM services across all D&B community schools in the programme estimated at £200,000 pa. In Phase 1 a subsidy for Tuke School of £40,000 in the first year of operation and reducing to £10,000 was committed to by the Council. No such subsidy was required at Phase 2.

46. There is not envisaged to be any call on this commitment for lifecycle and FM services for Phase 3a. The liabilities arising from these contracts will be funded by the schools and this arrangement will be formalised between the Council and the schools in the governing body agreements.

47. For community schools the contribution to meeting these costs is expressed as a percentage of School Budget Share, which is roll driven funding. The Council bears a risk for community schools that should rolls drop and funding decline, it will cover the amount by which the FM and lifecycle costs exceed the school contribution agreed. Bredinghurst is the only community school in Phase 3a. For Academies and Voluntary Aided schools the Council will require an absolute commitment to meet the cost of the FM service and the council does not bear



the risk associated with falling rolls.

48. The overall anticipated contribution to Phase 3a by the Council is expressed in Table 4:

**Table 4: Anticipated Council Investment in BSF Phase 3a**

|  | Amount |
|--|--------|
| Capital investment in construction     | £3.6m  |
| Revenue investment in ongoing services | Nil    |

49. The above capital liabilities are to be met from an allocation within the SSF Capital Contingency.
50. It is further recommended that the Cabinet note that the SSF Project Director will continue to work with Partnerships for Schools, Children's Services, Finance and Resources, the schools, governing bodies & diocesan authorities to identify other budgets in order to minimise the necessary financial contribution from the council, in accordance with the Executive decision May 2 2007.

#### **Financial Status of BSF Programme**

51. As part of a review of capital allocations that will form part of the Capital Refresh the SSF Capital Contingency has been reduced by £2.5m with this funding returned to the general capital pool.
52. Capital commitments and identified liabilities relating to Phase 1, 2, 3a and 3b of the programme can currently be met from within BSF grant funding supplemented from within the SSF Capital Contingency. Further allowances have been made within this contingency for identified risks. Southwark's own funding to be made available to support unconfirmed projects will need to be considered in light of these commitments, risks and other priorities.
53. A full capital position statement will be reported to Cabinet to inform decision making in regard to options for the delivery of unconfirmed projects.
54. Ongoing revenue liabilities remain within the project office budgets for the delivery of the programme agreed in February 2009.

#### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

##### **Finance Director (CS0149)**

55. The phase 2 schools reached financial close on 17 August 2010 within the financial parameters agreed by Cabinet on 15 June 2010.
56. The funding for the phase 3a schools construction and refurbishment works contracts is due to be met from BSF grants supplemented by £3.6m from the SSF capital contingency. It is expected that the ICT contract will be fully funded from BSF grant. FM contracts for the schools will be funded from contributions from the schools at nil cost to the council at financial close. The council will retain an ongoing financial risk to fund any shortfall due to a reduction in School Budget Share at Bredinghurst.

57. The SSF capital contingency has been reviewed for the size and appropriateness of amounts spent, committed, earmarked and allowed for with respect to retained council risks in delivering all three phases of the programme. It is considered that the programme can be delivered with a £2.5m reduction in the contingency.
58. Value for money continues to be a priority and was assessed at financial close of phase 2 and at stage 0 and stage 1 of phase 3. Revised protocols are being developed for the final phase of SSF, operational schools and the use of 4 Futures to deliver other capital projects. These revised protocols take into account the market changes in the construction industry and continuous improvements on previous phases.

### **Strategic Director of Communities, Law & Governance**

59. This report is an update report and a report seeking the approval of the Leader to delegate the approval of the SSF Phase 3a contracts to the Cabinet Member for Children's Services following consultation with the Strategic Director for Children's Services.
60. Pursuant to section 14 of the Local Government Act 2000 (as amended) the Leader may discharge this function and may delegate this function to a member of the cabinet. This requires a decision from the leader, prior to the decision in this report being made and in accordance with Article 6 of the constitution circulated to all members.

### **BACKGROUND DOCUMENTS**

| <b>Background Papers</b>  | <b>Held At</b>    | <b>Contact</b>                   |
|---|-------------------|----------------------------------|
| BSF Outline Business Case   | 160 Tooley Street | Sam Fowler, SSF Project Director |
| Executive Report - Southwark Schools for the Future: BSF Phase 3 - March 2010 | 160 Tooley Street | Sam Fowler, SSF Project Director |

### **APPENDICES**

| <b>No.</b> | <b>Title</b> |
|------------|--------------|
| None       |              |

## AUDIT TRAIL

|   |   |                          |
|---|---|--------------------------|
| <b>Cabinet Member</b>   | Councillor Catherine McDonald, Children's Services    |                          |
| <b>Lead Officer</b>   | Romi Bowen, Strategic Director of Children's Services |                          |
| <b>Report Author</b>  | Sam Fowler – SSF Project Director                     |                          |
| <b>Version</b>  | Final   |                          |
| <b>Dated</b>  | 7 June 2011   |                          |
| <b>Key Decision?</b>  | No  |                          |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b> |   |                          |
| <b>Officer Title</b>  | <b>Comments Sought</b>                                | <b>Comments included</b> |
| Strategic Director of Children's Services                               | Yes   | Yes                      |
| Strategic Director for Communities, Law and Governance                  | Yes   | Yes                      |
| Finance Director  | Yes   | Yes                      |
| Head of Procurement   | No  | No                       |
| <b>Cabinet Member</b>   | Yes   | Yes                      |
| <b>Date final report sent to Constitutional Team</b>                    | 10 June 2011  |                          |